

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 2700

IN THE MATTER OF:

Served April 23, 1985

RODGERS E. JOHNSON t/a J & J BUS)
SERVICE, Investigation of)
Compliance and Order to Show Cause)

Case No. MP-85-08

The Compact, Title II, Article XII, Section 4(a) provides that "No person shall engage in transportation subject to this Act unless there is in force a certificate of public convenience and necessity authorizing such person to engage in such transportation." See also Commission Regulation No. 59 regarding procedures for change in or abandonment of regular routes. Certificate of Public Convenience and Necessity No. 39 authorizes Rodgers E. Johnson t/a J & J Bus Service ("J & J" or "respondent") to provide service along certain described regular routes traversing specified streets in Prince George's County, Md., and Washington, D.C. Nothing in Certificate No. 39 authorizes respondent to serve the following points: Waterside Mall (M Street, S.W.); 7th & D Streets, S.W.; 7th & Maryland Avenue, S.W.; 10th & Pennsylvania Avenue, N.W.; 11th & G Streets, N.W. (Metro Center); 14th & K Streets, N.W.; 20th & M Streets, N.W.; 19th and Pennsylvania Avenue, N.W.; and 19th & E Streets, N.W. */ Applicant has published a "daily commuter schedule" indicating service at the points listed above, as well as others. Moreover, respondent has indicated that he offers to provide irregular route charter service, which is not authorized by respondent's certificate. Accordingly, respondent appears to be in violation of Title II, Article XII, Section 4(a) of the Compact and Commission Regulation No. 59.

Further, the Compact, Title II, Article XII, Section 5 provides that every carrier shall keep currently on file with the Commission a tariff showing its rates for transportation subject to the Compact, and that no carrier may charge a rate different than the rate shown in its tariff. See also Commission Regulation Nos. 55 and 56, governing tariff filing and rate changing procedures, respectively. J&J's tariff presently on file reflects rates effective July 16, 1978, including, for example, a rate of \$1.10 one-way for a trip between Clinton Shopping Center and all points served in the District of Columbia. The

*/ All listed points are located in Washington, D.C.

"daily commuter schedule" published by respondent indicates a one-way fare of \$2.50 for a trip between Clinton and points in Washington, D.C. Accordingly, respondent appears to be in violation of Title II, Article XII, Section 5 of the Compact and Commission Regulation Nos. 55 and 56.

Further, the Compact, Title II, Article XII, Section 4(h) provides that no certificate of public convenience and necessity may be transferred unless such transfer is approved by the Commission. Certificate No. 39 is issued to and held by respondent as a sole proprietor trading as J&J Bus Service. The "daily commuter schedule" referred to above shows service being held out under the name "J&J Bus Service, Inc.," which suggests that respondent may have formed a corporation to carry on his transportation business. Such a corporation would be a cognizable legal entity separate and distinct from the respondent, so that incorporation of the respondent's business would involve a transfer of Certificate No. 39 from the respondent, as a sole proprietor, to the corporation. Accordingly, respondent appears to be in violation of Title II, Article XII, Section 4(h) of the Compact.

Further, Commission Regulation No. 68 requires that motor vehicles operated by a carrier pursuant to the Compact, including vehicles operated under lease, shall be identified by displaying thereon the name of the carrier operating the vehicle and the certificate number assigned to such carrier. There is reason to believe that certain vehicles being operated by respondent under lease do not display respondent's name or certificate number. Accordingly, respondent appears to be in violation of Commission Regulation No. 68.

Under the Compact, Title II, Article XII, Section 13, the Commission is empowered to investigate any matters that may be necessary to determine whether the Compact and the rules and regulations promulgated thereunder are being, or are about to be, violated. Pursuant to such investigatory power, we hereby institute this proceeding and order that the respondent appear at the hearing hereinafter scheduled for the purpose of being examined by the staff and other interested parties concerning: (a) the routes respondent presently operates; (b) the respondent's present financial condition as it relates to the rates respondent presently charges; (c) the number of passengers carried on the routes respondent presently operates; (d) the identification, if any, appearing on the vehicles respondent presently operates; (e) the respondent's present form of business organization; (f) the respondent's justification, if any there be, for any deviations from or extensions of service presently authorized in Certificate of Public Convenience and Necessity No. 39; and (g) such other and further matters and facts as may be relevant to the inquiry at hand. For the purpose of facilitating the examination of the respondent at the said hearing, the respondent shall be directed to produce certain

documentary evidence as hereinafter specified. Moreover, the estimated costs of the hearing shall be assessed against the respondent in the amount specified below pursuant to the Compact, Title II, Article XII, Section 19.

Existing carriers upon whom this Order is served are hereby advised that a result of the instant proceeding may be an extension of the respondent's existing regular route service over additional routes pursuant to the Compact, Title II, Article XII, Section 4(e). Inasmuch as such an extension would require a preliminary finding of public convenience and necessity, existing carriers may find it in their interest to appear at the hearing and present evidence of the adequacy of existing regular route service at the points mentioned above where respondent appears to be providing unauthorized service, and to present evidence of the adverse effects, if any, that would result from an extension of the respondent's regular route service.

Similarly, existing carriers and other interested persons are hereby advised that a further result of this hearing may be the prescription of rates for the respondent's regular route service pursuant to the Compact, Title II, Article XII, Section 6. Existing carriers and other persons having an interest in the level of respondent's rates may find it in their interest to appear at the hearing and present evidence on the issue of what rates, if any, should be prescribed for the respondent.

Finally, the respondent and other interested persons are advised that other possible results of this proceeding may be the revocation of Certificate of Public Convenience and Necessity No. 39 pursuant to the Compact, Title II, Article XII, Section 4(g); the bringing of an action to enjoin the respondent from further violations of the Compact and the rules and regulations promulgated thereunder pursuant to the Compact, Title II, Article XII, Section 18(a); and/or the criminal prosecution of the respondent and the imposition of monetary fines pursuant to the Compact, Title II, Article XII, Section 18(d). The respondent is hereby directed to appear at the hearing in this matter and show cause, if any there be, why the sanctions described above should not be imposed. Respondent is reminded that Commission Rule No. 3.02 entitles him to representation by an attorney at the hearing.

The compliance fitness of certificate-holder Rodgers E. Johnson is called into serious question in this case. At issue, inter alia, is whether rates, routes, and operating entity have all been changed without the authorization and scrutiny required by law. Rodgers E. Johnson is specially admonished that, if the indications that sparked this investigation are borne out by the evidence, his cooperation in this investigation and his compliance with the requirements of this order will weigh heavily in the outcome of this proceeding.

THEREFORE, IT IS ORDERED:

1. That the above-captioned proceeding is instituted pursuant to Title II, Article XII, Sections 4(e), 4(g), 6, and 13 of the Compact, collectively, to determine whether Rodgers E. Johnson trading as J & J Bus Service is operating in compliance with the Compact and the rules and regulations promulgated thereunder and, if not, further to determine whether the routes of such carrier should be extended and new and/or additional rates prescribed or, alternatively, whether Certificate of Public Convenience and Necessity No. 39 of such carrier should be revoked and the imposition of injunctive and criminal sanctions sought.

2. That Rodgers E. Johnson t/a J & J Bus Service is made a party respondent to the above-captioned proceeding.

3. That the above-captioned proceeding is hereby scheduled for public hearing to commence at 9:30 a.m., on Thursday, May 30, 1985, in the Hearing Room of the Commission, Room 314, 1625 I Street, N.W., Washington, D.C. 20006.

4. That the respondent, Rodgers E. Johnson trading as J & J Bus Service, is directed to appear at the said hearing and to produce there and then for inspection the original and four copies of each of the following materials, along with competent supporting witness(es): (a) a written description of all regular routes presently being operated by respondent; (b) a list of the rates presently being charged by the respondent for service between all points on such regular routes; (c) a current balance sheet and an income statement detailing respondent's operations for the 12 months ended December 31, 1984; (d) a written report (ridership survey) of the origin and destination of each passenger transported by the respondent over each regular route during the period May 20 to May 24, 1985, inclusive; (e) a statement describing the identification appearing on each motor vehicle operated by the respondent; and (f) with respect to "J & J Bus Service, Inc.," if such a corporation exists, the Articles of Incorporation, the minutes of the organizational meeting of the board of directors, a list of names and addresses of the officers and directors, and a list of names and addresses and holdings of the stockholders of such corporation.

5. That the respondent, Rodgers E. Johnson trading as J & J Bus Service, is further directed to appear at the said hearing and show cause, if any there be, why respondent's regular routes should not be extended and rates not prescribed pursuant to the Compact, Title II, Article XII, Sections 4(e) and 6, respectively; and why, alternatively, respondent's Certificate of Public Convenience and Necessity No. 39 should not be revoked, and injunctive and criminal sanctions not sought, pursuant to the Compact, Title II, Article XII, Sections 4(g), 18(a) and 18(d), respectively.

6. That respondent is directed to publish once, in a newspaper of general circulation in the Metropolitan District, notice of this proceeding and hearing, in the form prescribed by the staff of the Commission, not later than May 10, 1985.


7. That respondent is directed to post in all vehicles it operates within the Metropolitan District, continuously through the date of public hearing, notice of this proceeding and hearing, in the form prescribed by the staff of the Commission, commencing no later than May 10, 1985.

8. That respondent produce at the hearing affidavits attesting such publication and posting.

9. That any person desiring to be heard in this matter shall so notify the Commission, in writing, no later than May 20, 1985, and shall mail a copy of such notice to respondent, Rodgers E. Johnson trading as J & J Bus Service, 16701 Brandywine Road, Brandywine, MD 20613.

10. That respondent is hereby assessed \$1,000 pursuant to Title II, Article XII, Section 19 of the Compact, and is directed to deliver said sum to the office of the Commission, Suite 316, 1625 I Street, N.W., Washington, D.C. 20006, no later than May 20, 1985.

BY DIRECTION OF THE COMMISSION, COMMISSIONERS WORTHY, SCHIFTER, AND SHANNON:


WILLIAM H. MCGILVERY
Executive Director